

REMARKS/ARGUMENTS

Claims 1, 25, 26, 28-30, and 37-50 are pending. Claim 1 and 25 are Currently amended. Claims 2-24, 27, and 31-36 have been Canceled. Claims 37-50 are New. Claims 26, and 28-30 have been Withdrawn as non-elected Method claims of the Restriction Requirement with the proviso that withdrawn claims can be rejoined if the elected composition claims are allowed and the method claims contain all the limitations of the composition claims.

Applicant respectfully requests the entrance of the amendments to the claims. The claims have been amended to claim more precisely the disclosed invention.

**35 U.S.C. § 102(b) Rejections**

Examiner has rejected Claim 1 under 35 U.S.C. 102(b) as being anticipated by Tan (US6,350,453). Tan '453 teaches that *Bixa orellana* (i.e. annatto) contains tocotrienols and are known to have beneficial effects against hypocholesterolemia, reduce lipoprotein plasma levels and be useful in the treatment of cardiovascular disease (column 1, lines 10-47). Tan et al. also disclose a method to separate tocopherols and tocotrienols so essentially no tocopherols are present (column 2, lines 4-6, 18-20, 45-49). Thus, Tan anticipates the claimed invention.

Applicants have amended Claim 1 to claim "an oily byproduct of *Bixa orellana* seed containing a tocotrienol where the ratio of delta-tocotrienol to gamma-tocotrienol is between 1:25 to 25:1." Claims 37-38 are dependent claims from Claim 1 and further claim narrower ranges of delta-tocotrienol to gamma-tocotrienol ratios.

An annatto extract is defined in the specification as an oily byproduct of *Bixa orellana* seed [paragraph 0041] and the ratios of delta-tocotrienol to gamma-tocotrienol are disclosed in [paragraph 0049]. Therefore, no New Matter is added with this amendment and new claims. The delta-tocotrienol to gamma-tocotrienol ratio in the oily byproduct of *Bixa orellana* seed is not a constant and varies between production lots.

**35 U.S.C. § 103(a) Rejections**

Examiner has rejected Claims 1-5 and 7-10 under 35 U.S.C. 103(a) as being unpatentable over Tan (US 6,350,453), in view of Wright et al. (US 5,217,992) and in view of Levy et al. (US 2003/0104090).

Applicants have amended Claim 1 and Cancelled claims 2-5 and 7-10. These amendments have obviated the rejection and the Examiner is requested to withdraw the rejection and allow the claims.

### **New Claims**

Independent Claim 39 and dependent Claims 41 to 46 claim a composition comprising a mixture of an oily byproduct extract of *Bixa orellana* seed and a natural extract with varying levels of tocopherol and varying levels of isomers of tocopherol. These compositions are disclosed in paragraphs [0050 & 0051]. No New Matter is added by these claims. None of the cited Prior Art discloses a mixture of annatto and natural extracts to achieve the varying levels of tocopherols.

Independent Claim 47 and dependent Claim 48 claim a composition comprising an oily byproduct extract of *Bixa orellana* seed and a natural extract with varying levels of tocotrienol isomers. These compositions are disclosed in paragraph [0052]. No New Matter is added by these claims. None of the cited Prior Art discloses a mixture of annatto and natural extracts to achieve the varying levels of tocotrienols.

Independent Claim 49 and dependent Claim 50 claim a composition comprising an oily byproduct extract of *Bixa orellana* seed and a natural extract with varying levels of tocotrienol and tocopherols. These compositions are disclosed in paragraph [0053]. No New Matter is added by these claims. None of the cited Prior Art discloses a mixture of annatto and natural extracts to achieve the varying levels of tocotrienols and tocopherols.

### **Conclusion**

This Response to a previous Final Rejection is filed with a Request for Continued Examination (RCE) and a request for a 2-month extension. However, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to credit card information on record.

The claims have been amended to claim more precisely the disclosed invention. No new matter has been added by the amendments to the claims.

In view of Applicant's remarks, it is respectfully submitted that the present application is in condition for allowance. The Examiner is respectfully invited to contact the undersigned at the telephone number appearing below should any remaining concerns prevent the prompt examination and allowance of the application.

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/KOH/

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